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October 21, 2019

Vanessa Countryman, Director
Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: File No. SR-MSRB-2019-11

Dear Ms. Countryman:

The Municipal Securities Rulemaking Board (MSRB) has proposed to double – from \$500 to \$1000 – the annual professional fee for each municipal advisor representative.[1] The MSRB has also designated the proposed rule change for immediate effectiveness.[2] The Investment Company Institute[3] is writing to the Commission to express our strong opposition to the MSRB again proposing to raise fees on municipal advisors and to recommend that the Commission not approve this fee increase without further study.

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[1] *See Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend MSRB Rule A-11, on Assessments for Municipal Advisor Professionals, to Increase the Annual Professional Fee Over a Two-Year Phase-In Period,* SEC Release No. 34-87075 (September 24, 2019) ("the 2019 Release").

[2] In fact, the new fee already appears on the MSRB's webpage as the fee charged to municipal advisors. *See* http://www.msrb.org/Regulated-Entities/Fees/Municipal-Advisors.aspx.

[3] The Investment Company Institute (ICI) is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's members manage total assets of US\$23.4 trillion in the United States, serving more than 100 million US shareholders,

We oppose this fee increase because: (1) the MSRB has not published a thorough economic analysis demonstrating the need for or fairness of this increase: (2) this will be the *third* increase in fees imposed by the MSRB on municipal advisory firms in the past five years (*i.e.,* since 2014); (3) compared to other regulatory fees imposed on securities industry professionals, the MSRB's fee is considerably higher even though the MSRB has less regulatory responsibility than such other regulators; and (4) aside from increasing the revenue stream for the MSRB, the basis for increasing this fee appears questionable. Each of these issues is discussed in more detail below.

THE MSRB HAS FAILED TO PUBLISH AN ECONOMIC ANALYSIS SUPPORTING THE FEE INCREASE

In September 2013, the MSRB announced that it had adopted a policy for integrating economic analysis into its rulemaking process. According to the announcement, this new policy, the "Policy on the Use of Economic Analysis in MSRB Rulemaking," was intended to "ensure regulations that support a fair and efficient municipal market appropriately balance the benefits of protections for investors and municipal issuers with the burdens place on regulated entities."[4] According to the Policy, the "key elements" of the MSRB's economic analysis would consist of:

1. Identifying the need for a proposed rule and explaining how the rule would meeting that need;
2. Articulating a baseline against which to measure the likely economic impact of the proposed rule;
3. Identifying and evaluating alternative regulatory approaches; and
4. Assessing the benefits and costs, both quantitative and qualitative, of the proposed rule and the main reasonable alternative regulatory approach.

The Policy expressly excludes from its scope any "proposed rule change that the MSRB reasonably believes would qualify for immediate effectiveness under Section 19(b)(3)(A) [of the Securities Exchange Act] if filed as such . . .." Interestingly, whenever the MSRB proposes a fee increase on registrants, it files such proposal with the SEC for immediate effectiveness, thereby obviating the need for the MSRB to conduct a thorough economic analysis of the fee. The current proposal is no exception. As a result, even though the fees the MSRB imposes on registrants *directly impact registrants and their cost of doing business,* the MSRB publishes no economic analysis of such fees.

We fail to see the rationale for the MSRB excluding all such fee increases from its Policy and we believe the MSRB disserves registrants, the markets, and the investing public by failing to conduct such analysis. Indeed, if the MSRB conducted such analysis, it would better document whether, in fact, fee increases are necessary or appropriate and provide a more reasoned explanation in support of the MSRB's states that all such fee increases are:

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[4] *See MSRB Adopts Policy for Integrating Economic Analysis into Rulemaking Process,* MSRB Press Release (September 26, 2013).

- Reasonable;
- Necessary;
- Designed to more appropriately allocate the costs of operating the MSRB; and
- Advance the MSRB's "goal of developing a sustainable financial model that will enable the MSRB to year-over-year fulfill its statutory mandated and meet the unique responsibilities of being the self-regulatory organization for the municipal securities market."

Consistent with its mission to protect investors, maintain fair, orderly, and efficient markets, facilitate capital formation, oversee the MSRB's activities, and be the final arbiter of changes to the MSRB's rules, including the fees it charges, we strongly recommend that the SEC disallow this fee until the MSRB publishes a sound economic analysis that justifies a 100% increase in the fee imposed on municipal advisory registrants.

THIS IS THE THIRD TIME IN FIVE YEARS THAT THE MSRB HAS INCREASED THESE FEES

As noted in the MSRB's proposal, the MSRB first imposed a fee on investment advisory representatives in 2014 "to help defray the cost and expenses of operating and administering the MSRB, particularly the increased cost as a result of the regulation of municipal advisors."[5] The amount of this fee was $300. Three years later, in 2017, the MSRB increased this fee by approximately 67%, to $500.[6] Now, but two years after the 2017 increase, the MSRB proposes to double the 2017 fee. If approved, the fee will have increased *over 300% since it was first imposed five years ago.* We are not aware of any other fees imposed by securities industry regulators that have experienced such a significant increase in such a short period of time. And, as noted in the next section of this letter, the MSRB's fees are already significantly higher than those imposed on securities industry representatives by securities industry regulators.

It bears remembering that, in 2017, when the MSRB raised the fee imposed on municipal advisor professionals from $300 to $500, it justified such fee increase as "reasonable as well as necessary and appropriate to help defray the costs of operating and administering the MSRB." The explanation continued as follows:

> It is also a step towards achieving the MSRB's strategic goal of promoting long-term financial stability by assessing fair and equitable fees, and diversifying funding sources. The MSRB believes the proposed rule change will help the organization provide for assessments that are increasingly more fairly and equitably apportioned among all registrants.[7]

[5] The 2019 Release at p. 14.

[6] The 2019 Release at n. 33.

[7] *See* SEC Release No. 34-81841 (October 10, 2017)("the 2017 Release") at p. 5.

According to the 2017 Release, a significant increase in the original fee of $300 was "a reasonable initial starting amount to help defray the costs and expenses of operating and administering the MSRB, particularly the MSRB's regulatory and related activities in connection with municipal advisors."[8] As explained in the Release, these activities included adopting a comprehensive regulatory framework for municipal advisors, the development of professional standards for such persons, the establishment of a regulatory exam to test a municipal advisor's competency and knowledge of applicable rules, and the MSRB's "considerable education, outreach, and compliance activities."[9]

In connection with the MSRB's 2017 fee increase, it noted that it had conducted a "holistic review of its fees" in 2015. At that time, the MSRB considered, but elected not to, increase the $300 fee in order "to provide municipal advisors with additional time for the municipal advisor regulations and business models to more fully develop."[10] Apparently, the 2015 review revealed that "the targeted revenue to be generated from the municipal advisor professional fee of approximately $2 million . . . or approximately 5% of total MSRB revenues, was not yet being met and the per professional fee would need to be increased in the future."[11] The 2017 fee increase from $300 to $500 was "the next step towards moving to that revenue target."[12]

Notwithstanding this explanation for an increase in 2017, in support of its plan to now double the fee, the MSRB again points to the fee increase being needed "to better defray the costs and expenses of operating and administering the MSRB."[13] Like the 2017 Release, it also discusses the MSRB expending "significant resources in developing a regulatory framework for municipal advisory activities."[14] In other

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[8] The 2017 Release at pp. 8-9.

[9] In addition to their registration fees, municipal advisor professionals must pay an additional $265 to take this examination. The MSRB receives a majority of the proceeds registrants pay to take the exam.

[10] The 2017 Release at p. 11.

[11] There is no explanation in the 2017 Release regarding how the MSRB arrived at its determination that 5% of its revenues should derive from municipal advisory fees.

[12] *Id.* While the 2017 Release discusses the revenue the MSRB hopes to receive from municipal advisory professionals, neither the Release nor the MSRB's financial statements indicate how much of the MSRB's revenues are spent regulating such persons. Again, were the MSRB to conduct a thorough economic analysis of its proposed fee increases, such analysis may shed some light on this issue and the reasonableness of the fees charged to registrants.

[13] The 2019 Release at p. 3.

[14] The 2019 Release at p. 4. These are the same activities referred to in the 2017 Release and, in fact, the footnote referencing such activities cites the rules the MSRB adopted in 2014 and 2015 to regulate municipal advisors.

words, in this proposal to double the fee charged to municipal advisory professionals, the MSRB cites the same activities to justify the 100% increase that it cited in 2017 – just two years ago – when it increased the fee by approximately 67%. Also, like the arguments made in support of the 2017 fee increase, the MSRB's current proposal notes that the purpose of the proposed rule change is to more "appropriately allocate the costs of operating the MSRB between dealers and municipal advisors."[15]

Though not mentioned in the MSRB's current proposal, in July 2017, the MSRB for the first time began imposing on underwriters of municipal fund securities an underwriting fee. This fee, too, was imposed based on the fact that the "MSRB believes that the proposed rule change is necessary and appropriate to fund the operations and administration of the Board . . . and [achieve] a more equitable balance among regulated entities and a fairer allocation of expenses of the regulatory activities, system development, and operational activities undertaken by the MSRB."[16] Even though the underwriter fee was imposed to provide a "more equitable balance among regulated entities" and presumably established a more equitable balance, the MSRB now may be upsetting the balance by increasing the fees on another group of regulated entities – municipal advisory professionals.

As the Commission considers the MSRB's current proposal to double the fee imposed on municipal advisory professionals, we believe that it is necessary to seriously consider whether such fee increase, the third in five years, is truly warranted in light of the history of this fee – *i.e,* the $300 fee established by the MSRB when it was granted the authority to require the registration and regulation of municipal advisory professionals[17] and the 67% increase in this fee (from $300 to $500) in 2017. The Commission should also determine the validity of the MSRB's justification for this fee increase. Based upon the above excepts from the MSRB's releases relating to its fee increases since 2014, it appears that, when the MSRB wants to increase its revenue stream, it recites the exact same language to justify an increase in fees without providing a sound basis to justify its statements.

Were the SEC to require the MSRB to conduct a thorough economic analysis of each of its fee proposals, including the current one, and were the MSRB to conduct such an analysis, the results would better enable the Commission and the public to assess the validity of the MSRB's proposed increases on a more sound basis than simply the MSRB's repeated unsubstantiated assertions of the necessity of such fess and their appropriateness. Until such time as the SEC has such information, we oppose it granting a fee increase on the sole basis of the MSRB's pro forma boilerplate recitations in support of such fee

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[15] The 2019 Release at p. 5.

[16] *See* SEC Release No. 34-81264 (July 31, 2017). According to the MSRB's 2018 financial statements, this new underwriting fee generated approximately $1.3 million in additional revenue to the MSRB in 2018.

[17] According to the 2017 Release, this $300 fee "was originally established in 2014 as a reasonable initial starting amount to help defray the costs and expenses of operating and administering the MSRB, particularly the MSRB's regulatory and related activities in connection with municipal advisors." *See* the 2017 Release at pp. 8-9.

increases. The MSRB is obviously so confident that the Commission will approve its proposal without question or challenge that it is already posting the increased fees as a *fait accompli* on the Municipal Advisor Fee Schedule on its website.[18]

THE MSRB'S FEES ARE SIGNIFICANTLY HIGHER THAN OTHER REGULATORS' FEES

As the Commission decides whether to approve the MSRB's proposal to increase the annual fee for municipal advisory representatives to $1000, it should also consider the reasonableness of the fee vis-à-vis the fees imposed on registrants by other securities regulators.[19] While the Commission does not require the registration of investment adviser representatives, such persons associated with either a federally-registered or a state-registered adviser are required to register and pay a registration and an annual renewal fee in the states in which they conduct business.[20] The states' registration fees range from a low of $25 (Indiana) to a high of $250 (Georgia). Only seven states have fees in excess of $100 and the most common fee imposed by the states is $50, which is the fee charged by eighteen states. The states' annual renewal fees range from $20 (Texas) to $120 (Pennsylvania). The most popular renewal fee is $50.

These fees are considerably lower than the $1000 annual fee the MSRB is proposing. Like the MSRB, which justifies its proposed fee increase by reference to the rules it has adopted to regulate investment advisory representatives and its educational and other outreach activities, the states, too, engage in these activities. Unlike the MSRB, however, the states have the added responsibility of both conducting inspections of advisers and their representatives to ensure their compliance with the laws and sanctioning violations of such laws – a responsibility the MSRB does not have.[21]

Like the states and the MSRB, FINRA is also charged with writing the rules that govern the conduct of securities industry representatives. While FINRA does not regulate the conduct of municipal advisory representatives, it does regulate the representatives of municipal securities dealers and broker-dealers. Unlike the MSRB, FINRA is also responsible for conducting inspections of municipal securities dealers

[18] *See* fn. 2, above.

[19] As mentioned above, this annual fee is in addition to the $265 the MSRB charges municipal advisory representatives for the Municipal Advisor Representative Qualification Examination (the Series 50 exam). Of this $265, $150 is paid to the MSRB and $115 is paid to FINRA for administering the exam.

[20] If the representative represents a federally-registered adviser, it is only required to register in the state where it maintains its principal place of business. Representatives of state-registered advisers must register in each state in which they have customers.

[21] The SEC is responsible for conducting inspections of municipal advisors and sanctioning them for violating the law. As noted in the text, the SEC does not impose any fees on investment advisory representatives. Municipal advisers pay an annual registration fee of $1000 to the MSRB.

and broker-dealers and their representative to ensure their compliance with the law and for sanctioning such persons when they violate the law.[22] By comparison to the MSRB's proposed annual $1000 fee, FINRA charges representatives an initial registration fee of $100 and an annual fee of $45. Again, far below the fees the MSRB is proposing.[23]

As the Commission assesses the reasonableness of the MSRB's annual $1000 fee and whether to approve it, we urge it to consider why the MSRB, which has more limited responsibility over its registrants than other regulators, needs to impose fees that are so significantly higher than the fees imposed by other regulators with more responsibilities and why, given its responsibilities and the recent previous fee increases, it now needs to double the fee.

THE MSRB'S BASIS FOR INCREASING THIS FEE IS QUESTIONABLE

From the MSRB's submission to the Commission, it is impossible to determine the validity of the MSRB's proposed fee increase. This is for two reasons. First, as discussed above, the MSRB did not conduct an economic analysis of the proposed fee increase consistent with the MSRB's Economic Policy. [In fact, the MSRB has only provided assertions and has not provided any evidence substantiating the need for an increase. Further as described above, the MSRB's proposed fee is far higher than those of other regulators with more responsibilities.] Secondly, the MSRB's justification for increasing the fee is a recitation of the exact language they have previously used to increase this fee on two prior occasion. As such, it is impossible from the MSRB's proposal to determine whether the increase is reasonable, necessary, or appropriately designed. Nor is it possible to determine from the MSRB's proposal whether it will fulfill the MSRB's goal of developing a sustainable financial model.

Moreover, while the MSRB's proposal attempts to justify this fee increase by discussing a variety of activities, including the adoption of rules more than five years ago and its outreach activities, including the publication of information and resources, there is no indication in the proposal of the costs associated with these activities. Nor is there any discussion in the proposal of whether the MSRB has conducted any surveys or outreach activities to determine whether municipal advisors utilize or find value in such outreach activities. In light of the fact that municipal advisors' fees are being doubled to pay for these activities, there would appear to be merit in determining the costs associated with the MSRB's activities related to municipal advisors, which advisers bear, and the value of such activities to advisors, municipal entities, and investors.

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[22] FINRA is also responsible for inspecting municipal securities dealers to ensure their compliance with the MSRB rules applicable to municipal securities dealers and their representatives.

[23] The initial registration fee FINRA charges registered representative is 10% of the MSRB's fee and its annual renewal fee is 5% of what the MSRB is proposing.

For all the reasons discussed above, the Institute strongly recommends that the Commission not approve this fee increase without further study. We appreciate the opportunity to share our views with you.

Regards,

Tamara K. S

Tamara K. Salmon
Associate Counsel